

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

EVERETT DE'ANDRE ARNOLD,
KADEN BRADFORD, and
SANDY ARNOLD,

Plaintiffs,

VS.

BARBERS HILL INDEPENDENT
SCHOOL DISTRICT,

Defendant.

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C.A. NO.: 4:20-CV-01802

JURY TRIAL REQUESTED

**BARBERS HILL INDEPENDENT SCHOOL DISTRICT’S RESPONSE IN
OPPOSITION TO PLAINTIFFS’ MOTION TO FILE A SUR-REPLY TO THE
DISTRICT’S MOTION TO QUASH THE DEPOSITION OF SARA LEON**

Barbers Hill Independent School District (the District) responds in opposition to Plaintiffs' Letter requesting permission to file a sur-reply to the District's motion to quash the deposition of Sara Leon¹, as follows:

1. The District filed its motion to quash the deposition of Sara Leon, and corresponding protective order, on July 14, 2022. *See* Dkt. No. 204. In accordance with the agreed upon briefing schedule, Plaintiffs filed their response, on August 4, 2022, and the

¹ Without conferring with counsel for the District, on September 12, 2022, Plaintiffs filed a motion to file under seal their letter to the Court requesting permission to file a sur-reply to the District's motion to quash the deposition of Sara Leon. *See* Dkt. No. 222. The purpose behind Plaintiffs filing their letter under seal was because of the Exhibit attached to it, which is a document the District initially designated as confidential. *Id.* at Exh. 1, Exh. A. *After* filing their motion to file under seal, Plaintiffs emailed counsel for the District regarding the document and requested the confidential designation be removed or otherwise specific redactions be made by September 26, 2022, in accordance with the Amended Protective Order (Dkt. No. 160). Plaintiffs then, confusingly, stated that they intended to refile the letter on September 27, 2022, with redactions and the Court's approval. The Court granted Plaintiffs' motion to file under seal, on September 13, 2022. The District has since informed Plaintiffs that it would remove its confidential designation of the document. And, after conferring with Plaintiffs' counsel, confirmed Plaintiffs believe that their letter requesting permission to file a sur-reply was deemed filed on September 12, 2022. As such, the District files its response in opposition.

District filed its reply on, August 11, 2022. *See* Dkt. Nos. 207, 214.

2. Now, *a month* after the motion has been fully briefed, and without conferring with counsel for the District, Plaintiffs filed a letter with the Court seeking leave to file a sur-reply. *See* Dkt. No. 222. Not only is this request untimely it was not contemplated by the briefing schedule agreed upon by the Parties. *See* Dkt. No. 204 at Certificate of Conference.

3. Further, the basis for Plaintiffs’ request to file a sur-reply is solely to re-write their response and backtrack on their argument, which amounts to nothing more than a waste of the Parties’ and the Court’s resources. *See* Dkt. No. 222 at Exhibit 1. In its reply, the District pointed out Plaintiffs’ assertions that the District has not provided any information or documents relating to the communications between Ms. Leon and the DOJ as demonstrably false, citing to the numerous Bates-numbered documents that have already been produced and include all communications between Ms. Leon and the DOJ. *See* Dkt. No. 214 at Part A. Plaintiffs assert that the District has a “selective reading” of their response, and assert their response “does not allege that *no* documents with the DOJ have been produced, but rather no *relevant* documents—or documents that would obviate the need for a deposition—have been produced.” *Id.* at Exh. 1, p. 1. In support, Plaintiffs cite to an inapposite argument, found *six pages* after the demonstrably false statement is made, that relates to communications between Ms. Leon and Dr. Poole, which are privileged. *Id.* In other words, Plaintiffs’ proffered sur-reply is not a proper sur-reply at all – it does not address a new argument or new facts; rather, it simply seeks to impermissibly give the non-movant the last word.

4. Additionally, Exhibit A to Plaintiffs' letter that they include in support of their argument is unhelpful. What is more, the document was produced on December 30, 2021, and, therefore, available to Plaintiffs when they filed their response and could have been included then. Exhibit A is a letter from the DOJ to the District's general counsel regarding the DOJ's concerns that the District's policies did not specifically reference *religious exemptions* available to parents and students. *Id.* at Exh 1, Exh. A. Plaintiffs do not assert a claim based on religion. *See generally* Dkt. No. 141.

5. This Court need only read the motion, response, and reply to determine the issue before it, including whether or not Plaintiffs made material misrepresentations. And, as this Court's own procedures note, "[t]he Court will usually decline to consider such additional briefing" as sur-replies. *See* Court Procedures at C.4.

6. As such, the District requests the Court deny Plaintiffs' request to file a sur-reply as untimely, unnecessary, and a waste of the Court's and the Parties' resources.

CONCLUSION

For the foregoing reasons, this Court should deny Plaintiffs' request to file a sur-reply to the District's motion to quash the deposition of Sara Leon.

Respectfully submitted,

ROGERS, MORRIS, & GROVER, L.L.P.



RICHARD A. MORRIS

Attorney-in-Charge

State Bar No. 14497750

Fed. I.D. 2780689

rmorris@rmgllp.com

JONATHAN G. BRUSH

State Bar No. 24045576

Fed. I.D. No. 619970

jbrush@rmgllp.com

AMY DEMMLER

State Bar No. 24092337

Fed. I.D. No. 3227731

ademmler@rmgllp.com

5718 Westheimer, Suite 1200

Houston, Texas 77057

Telephone: 713/960-6000

Facsimile: 713/960-6025

ATTORNEYS FOR BARBERS HILL
INDEPENDENT SCHOOL DISTRICT

CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2022, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will send electronic notification of such filing to all counsel of record.



Attorney for Barbers Hill Independent
School District